IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 173 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHILKAUR & 1 - Applicant(s)
Versus
GURBACHANSING KARAMSING & 1 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Applicant(s) : 1 - 2.
MR BM GUPTA for Respondent(s) : 1,
MR MR MENGDEY, APP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/10/2007

ORAL JUDGMENT

The petitioners herein have prayed for quashing of a criminal complaint bearing Criminal Case No.2071 of 1997 pending before the court of Metropolitan

Magistrate, Court No.16, Ahmedabad. Petitioner No.2 is the brother of respondent No.1. Respondent No.1 had lodged the above mentioned complaint. Petitioner No.1 is the wife of petitioner No.2.

2. In the complaint, it is stated, inter alia, that the petitioners have fabricated a document purporting to carry the signature of the complainant which document was made to evidence handing over of the property by the complainant to the petitioners.

3. It appears that there were certain civil disputes between the parties which led to suit being filed before the civil court. Before the said court, the above-mentioned document was produced by the petitioners. As per the complaint, the same was produced in Civil Suit No.1046/86 on 28.2.95. Learned advocate for the complainant points out that before the said Court also the complainant had denied the signature on the document. On the basis of the allegations, the petitioners are alleged to have committed offence under section 467,468, 471 read with 114 of the Indian Penal Code.

4. In the present petition, it is the case of the petitioners that the entire dispute is of civil nature and the complainant did not object to the document in question when the proceedings were pending. The complaint came to be filed after much delay. It is also contended that no cognizance of the offence charged against the petitioners can be

taken without the complaint in writing by the concerned Court as required under section 195 of the Code of Criminal Procedure. On the other hand, counsel for the complainant submitted that it is a case of forgery as defined under section 463 of the Indian Penal Code and as per the allegations contained in the complaint, forgery was completed before the production of the document in the court and that therefore, provisions of section 195 of the Criminal Procedure Code would not apply.

5. I have also heard learned APP Shri Mengdey for the State.

6. Having heard the learned advocates appearing for the parties, I find that the complainant has complained about his signature having been forged on the document in question. The document was prepared and thereafter produced before the Court as per the complainant. In that view of the matter, ratio of the judgment of the Hon'ble Supreme Court in the case of **Sachida Nand Singh and anr. v. State of Bihar and anr.**, JT 1998 (1)SC 370 would apply. In the said decision, the Apex Court observed as follows:-

> “The sequitur of the above discussion is that the bar contained in Section195 (1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a Court. Accordingly, we dismiss this appeal.”

7. In that view of the matter, I do not find any substance in the petition. It is not possible to hold that the complaint discloses no offence or that the entire dispute is in the nature of civil dispute. It may be that between the parties there are some civil proceedings initiated and pending. That by itself would not be sufficient to hold that the complaint discloses no offence or that the nature of allegations are purely in the nature of civil dispute.

8. In the result, I find no merit in the petition. The petition is dismissed. Rule is discharged. Interim relief is vacated.

(Akil Kureshi, J.)

(vjn)